IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 14251 of 2004

Between:

1 Syed Mohd.Sadiq Hussaini alias Ghouse peer, S/o. Syed Shah Abdul Rahman Ali Rafiq R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
2 Syed Abdul Rahman S/o. Syed Mohd.Sadiq Hyussaini Alias Ghouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad, presently at U.S.A.
3 Syed Mohd.Khalid S/o. Syed Mohd.SadiqHussaini Alias Gouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
4 Syed Mohd.Kamal Alias Syed Ahmed S/o. Syed Mohd.SadiqHussaini Alias Gouse Peer, R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
5 Smt.Ayesha Fatima D/o.Syed Mohd.Sadiq Hussaini Alias Ghouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
6 Smt.Kaneez Fatima D/o.Syed Mohd.Sadiq Hussaini Alias Ghouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
7 Smt. Aziz Fatima D/o.Syed Mohd.Sadiq Hussaini Alias Ghouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.
8 Smt. Anees Fatima D/o. Syed Mohd. Sadiq Hussaini Alias Ghouse Peer
R/o. H.No.17-1-256 Bagh Mama Dilaram Santoshnagar Hyderabad.

(Petitioner Nos.2 to 8 are rep. by their G.P.A.Syed Mohd.Sadiq Hussaini alias Ghouse Peer petitioner No.1)

..... PETITIONERS

AND

1 Special Deputy Collector L.A (General) Hyderabad.
2 A.P. Housing Board Through Vice-Chairman and Housing Commissioner, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of Mandamus or any other appropriate writ order or direction declaring the action of the respondents in interfering with the possession of the petitioners over the well in S.No.305/1/A extent about Ac 11-06 guntas situated at Kandikal Village , Hyderabad even after the acquisition proceedings in pursuance of Notification dt.27.9.1984 under Section 4 (1) of the Land Acquisition Act 1894 have lapsed, illegal arbitrary and unconstitutional and consequently the respondents may be directed not to interfere extent about Ac.11-06 guntas situated at Kandikal Village, Hyderabad in the interest of justice.

Counsel for the Petitioners: MR. MOHD. GHULAM HUSSAIN

Counsel for the Respondent No.1: GP FOR LAND ACQUISITION

Counsel for the Respondent No.2: J.Prabhakar, Standing Counsel for A.P.Housing Board.

The Court made the following :

ORDER:

One Syeda Shareefa Fatima was owner of the land admeasuring Ac.11.08 guntas in Survey No.305/1/A of Kandikal village. The land admeasuring Acs.11.00 (53,240 square yards) was acquired for A.P.Housing Board and the award was passed and possession was taken in September, 1997, under the provisions of Land Acquisition Act, 1894. The first petitioner is the husband and the petitioners 2 to 8 are the children of late Fatima. The petitioners sought a reference before the Civil Court under Section 18 of the Act. It appears that there is a well admeasuring about 1,200 square yards. The petitioners allege that the Land Acquisition Officer did not determine the amount for well. According to the petitioners in C.C.C.A.No.110 of 2001 filed against the judgment dated 30.12.1998 in O.P.No.650 of 1987 passed by the Court of I Additional Judge, City Civil Court, Hyderabad. This Court directed the Land Acquisition Officer to determine the compensation for the well. In the writ petition, the petitioners allege that the respondents are interfering with the possession of the petitioners of the well and seek a direction not to interfere with the possession.

The learned counsel for the petitioner strenuously contends that the possession of the well is still with the petitioners and that the same was not taken possession at the time of passing award on 16.09.1997. The learned standing counsel for A.P.

Housing Board, Sri J.Prabhakar contends that possession was already taken over, that the award passed by the Land Acquisition Officer includes the compensation for the well and that the allegation made against the respondents is not correct. He also submits that even before the Division Bench, which decided the C.C.C.A.No.110 of 2001, this was pointed out and the Division Bench gave liberty to the Housing Board to agitate before the Land Acquisition Officer. The Division Bench in its judgment dated 31.01.2003 disposed of the said appeal partly allowing the same in the following terms.

It is an admitted fact that neither the Land Acquisition Officer nor the Civil Court passed any award for the existing well in the land in question. Hence, that Land Acquisition Officer is directed to pass an award for the well that was existing on the land within a period of three months from the date of receipt of a copy of this order. Both parties are at liberty to adduce both oral and documentary evidence with regard to the compensation payable to the well.

While the counsel for the respondents strenuously contended that the compensation was paid for the land occupied by the well, the counsel for the appellants contended that no compensation for the same was paid. We need not go into the question here. Both the counsel are given the liberty to agitate the same before the Land Acquisition Officer.

It is made clear that whatever statutory benefits that are payable to the land losers under the provisions of the Land Acquisition Act have to be paid on the enhanced compensation of Rs.15/- from the date of preliminary notification under section 4(1) of the Act till the date of taking possession of the lands or the award passed under section 11 of the Act, which ever is earlier.

In the result, the appeal is allowed to the extent indicated above.

A reading of the above would show that the petitioners are not in possession of the well. Further, it is brought to my notice by the learned standing counsel – which is not denied by the learned counsel for the petitioner; that after disposal of the C.C.C.A, the petitioners approached the Housing Board requesting to handover possession of the well to them, which would belie the contention that they are in possession of the well. In view of this, this writ petition filed on the premise that the petitioners are in possession of the well is wholly misconceived and no relief can be granted to the petitioners herein. It is however open to the petitioners to avail appropriate remedy having regard to the judgment of the Division Bench in C.C.C.A. No.110 of 2001.

The writ petition, for the above reasons, is dismissed. No costs.

_____

(V.V.S.RAO,J)

12.08.2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Special Deputy Collector, L.A. (General), Hyderabad.
2. The Vice-Chairman and Housing Commissioner, A.P.Housing Board, Hyderabad.
3. 2 CCs to the G.P.for Land Acquisition, High Court Buildings, Hyderabad. (OUT)
4. 2 CD copies.